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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,225	10/30/2003	Mary Elizabeth Davis	9396	9781

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EXAMINER

CHAPMAN, GINGER T

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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06/11/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/697,225	Applicant(s) DAVIS ET AL.	
	Examiner Ginger T. Chapman	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/30/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 30, 2008 has been entered.

Status of the Claims

2. Claims 1-6 and 13-30 are canceled, claims 7-12 are pending in the application.

Claim language interpretation

3. With regard to the terminology "visible highlighting", the examiner notes the instant specification defines the terms on pp. 5-6 as:

The term "visible" refers to the quality of being capable of being seen by the naked eye under conditions of normal room lighting or in natural light during the daytime. Becoming "more visible" or "less visible" means changing in visibility to a noticeable extent when viewed under a generally constant or equal lighting condition.

The term "visible highlighting" refers to the visible differentiation of an object such that it noticeably stands out from its surroundings, *e.g.*, by differing in coloration, hue, or tint, by differing in lightness, darkness, or contrast, by differing due to the presence or absence of graphical or solid color forms, or by any other variation serving to create noticeable visible differentiation.

Therefore the terminology “visible highlighting” is being considered as having a noticeable visible difference.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Inoue et al (US 6,630,096 B1).
5. With respect to claim 7, Inoue teaches a disposable absorbent article (1) for wearing about a lower torso of a wearer and having a longitudinal axis, two laterally opposed article side edges extending between a laterally extending first waist end edge in a first waist region and a laterally extending second waist edge in a second waist region, and a crotch region interposed therebetween (figs 1-3), the disposable absorbent article (1) comprising: a backsheet (3); a topsheet (2) joined to the backsheet and having a body-facing surface (fig. 1); an absorbent core (4) disposed intermediate the backsheet (3) and the topsheet (2); at least one wetness sensation member (22: fig 2; 26: fig. 3) disposed upon the topsheet (2) in a face to face arrangement with the permeable body-facing layer and having two laterally opposed side edges (fig. 3), at least a portion of each of the two wetness sensation member (22) side edges being disposed laterally inward of the article side edges (16: fig. 2); and a visible highlighting (c. 1, ll. 43-45) indicating a

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presence of the wetness sensation member (22) in the disposable absorbent article and being visible at least when viewing the bodyfacing surface of the topsheet (fig. 3: c. 1, ll. 43-45) to facilitate an opportunity for urinary toilet training of the wearer (c. 1, ll. 5-6) wherein said visible highlighting is visible prior to wetting of the wetness sensation member (c. 1, ll. 43-45), and wherein the appearance 26 of the visible highlighting is substantially unchanged upon wetting of the wetness sensation member (c. 3, ll. 25-44), wherein urine deposited by the wearer onto the wetness sensation member 26 (fig. 3) can penetrate through the permeable body-facing layer (2) in a z-direction away from the wearer to the absorbent core 4 (c. 1, ll. 66-67; c. 4, ll. 6-11) and the wetness sensation member 22, 26 retards the passage of urine in the z-direction and supports the movement of urine in an x-y plane (c. 3, ll. 10-50) such the wearer's awareness of urination is enhanced (c. 4, ll. 30-40).

With respect to the limitation of the highlighting being visible, the instant specification, in particular at p. 8, paragraph 1, discloses that the visible highlighting indicating a presence of the wetness sensation member means that the wetness sensation member is visible, i.e., the visible highlighting is not a separate member but is the wetness sensation member itself, and the wetness sensation member is visible when looking at the topsheet, and does not change in appearance when the diaper is wetted. Therefore, the wetness sensation member can be any visible difference between the wetness sensation member and the topsheet, such that one can look at the topsheet and see the wetness sensation member, which does not change in appearance, as per the instant specification definitions of “visible” and “visible highlighting” as defined at pp. 5-6.

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5. Inoue teaches the at least one wetness sensation member (22, 26) is integrated with the topsheet (2), thus inevitably and necessarily it is visible because the topsheet is visible. Inoue, at c. 3, ll. 64-66, teaches that a wetness sensation member is typically part of an element which is disposed upon the topsheet held against the skin of the wearer to enhance the wearer's awareness that urination has occurred. The topsheet is in a position in the diaper that it has the greatest likelihood of being wetted by the urine.

6. As seen in Figures 2 and 3, Inoue teaches a toilet training diaper comprising a wetness sensation member (22, 26) integrated with the topsheet (2). As best depicted in Figures 2 and 3, for purposes of illustration Figure 2 is reproduced below, because the wetness sensation member is a smaller piece of material located on top of the flow control layer (21) and further comprises a different material having different properties and characteristics (c. 2, ll. 30-67 to c. 3, ll.1-10), the examiner has a reasonable basis to conclude that the wetness sensation member (22) would differ in appearance and therefore would be noticeable from its surroundings, *e.g.*, by differing in coloration, hue, or tint, by differing in lightness, darkness, or contrast, by differing due to the presence or absence of solid color forms, or by any other variation serving to create noticeable visible differentiation, and would be substantially unchanged upon wetting. Additionally, Inoue teaches at c. 3, ll. 58-59 that there is a level difference between the layers, *i.e.* the wetness sensation member layer (22, 26) is raised or in relief above the flow control layer (21).

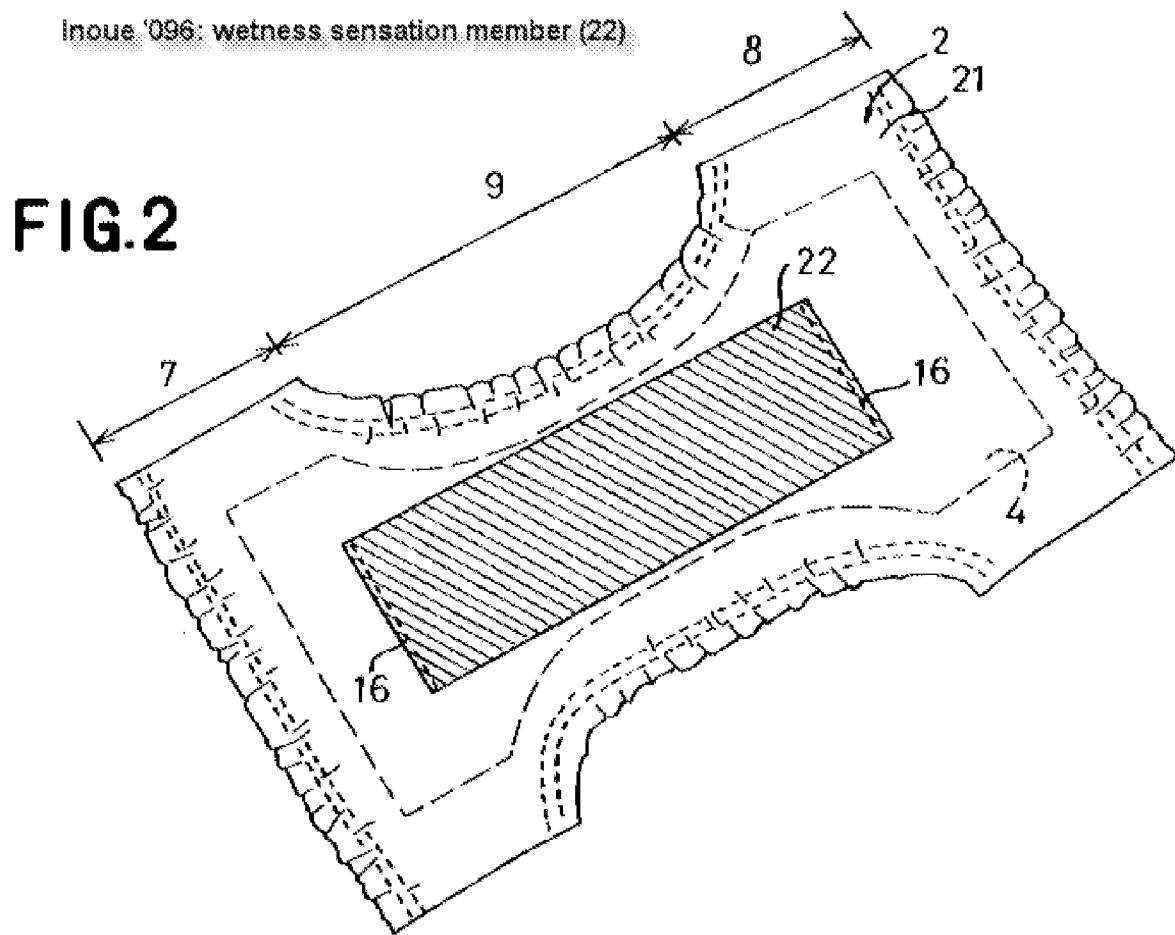
7. Thus the wetness sensation layer of Inoue would appear different in appearance from the remaining portions of the topsheet and thus meets the definition of visible highlighting as set forth by Applicants and therefore fulfills the claim limitations. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the

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wetness sensation member of Iguae differing in appearance from the other portions of the topsheet, i.e. visibly highlighted, as taught by Inoue in order to provide a visibly noticeable wetness sensation member for toilet training since as long as the member is visible when being viewed, its visibility indicates its presence.

8. Finally, as noted in the definition of “visible highlighting” set forth by Applicant, differing in “coloration, hue, or tint, by differing in lightness, darkness, or contrast, by differing due to the presence or absence of graphical or solid color forms, or by any other variation serving to create noticeable visible differentiation” means that the visible highlighting is not critical but is purely a matter of designer choice, when there is a variety of possible visible highlights it means that the designer can choose any color, pattern, etc. that he wants. With respect to the limitation that the highlighting comprises an ink printed pattern, Inoue teaches the visible highlighting. The method whereby the pattern is printed is a product by process limitation. The method of printing is not germane to the issue of patentability of the article itself, therefore this limitation does not lend additional patentable weight.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al (US 6,630,096 B1).

9. With respect to claims 8 and 9, reciting a plurality of wetness sensation members disposed upon the topsheet 5 to 15 mm apart, Inoue discloses wetness sensation members disposed upon the topsheet substantially as claimed (fig. 3) but does not expressly disclose more than one. Inoue discloses the general conditions of the claim, a wetness sensation member disposed upon the topsheet; the examiner notes that multiples of the same structure do not lend additional patentable weight and is an obvious modification.

10. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al (US 6,630,096 B1) in view of Igaue et al (GB 2,244,201A).

11. With respect to claims 10-12, Inoue discloses the invention substantially as claimed except for varying the locations the wetness sensation member is located. Igaue teaches, at page 4, lines 18-22, that the wetness sensation member, and thus its visible appearance signifying its presence, can be located within any given zone of the topsheet and thus can be visible upon any given zone of the topsheet depending upon the desires or intended use of the designer. When there are a variety of possible locations it means that the designer can choose any location he

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wants; and it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ginger T. Chapman whose telephone number is (571)272-4934. The examiner can normally be reached on Monday through Friday 9:30 a.m. to 6:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ginger T Chapman/
Examiner, Art Unit 3761
6/5/08

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761